

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4824 OF 2003

Mr. Nitin Jailus Salve ..Petitioner.

Versus

Mr. Lamuvel Timothi Khailare & Ors. ..Respondents.

Mr. T.D.Deshmukh for the Petitioner.

Mr. R.V.More for Respondent No.1.

CORAM : S. A. BOBDE, J.

DATED : 28TH SEPTEMBER, 2005.

P.C.:

1. Rule returnable forthwith. Mr. More Advocate waives service of rule for the respondent No.1. Heard by consent.

2. By this petition, the petitioner claiming to be a Chief Promoter of a proposed Co-operative Housing Society has challenged the order of the Divisional Joint Registrar dated 17.04.2002, refusing to interfere with the letter dated 28.02.2002 by which the proposal for registration of the applicant society

has been referred. It appears that the proposed society namely, St. Luke Co-operative Housing Society applied through its Chief Promoter i.e. the petitioner Nitin J. Salve for registration of the society. Apparently, this registration was opposed by the respondent No.1 before the Joint Registrar, who is empowered to grant such registration. The Assistant Registrar therefore, refused to consider the application for registration of the Society.

3. There is no dispute that the said issue came for consideration of this court in writ petition No. 1486/2002 filed by the present petitioner i.e. Nitin J. Salve. This court directed the petitioner to approach the civil court or the appropriate forum for obtaining a decision as to who is entitled to act as a Chief Promoter of the proposed Society. Admittedly, the petitioner has approached the civil court and the suit for the said purpose is pending. The petitioner also filed the instant revision which has been rejected by the impugned order. The Revisional Authority has observed that the registering authority does not have power to decide a dispute as to who is a chief promoter.

4. Mr. Deshmukh, the learned counsel for the petitioner submitted that section 9 of the Act makes it obligatory on the Registrar to register a society, if the proposed society has complied with the provisions of the Act and the rules. The Registrar cannot refuse to consider the application. This submission does not appear to be correct. Undoubtedly, section 9 requires the Registrar to register a society if he is satisfied that a proposed society has complied with the provisions of the Act and the rules. Obviously, in this case the Registrar has not been so satisfied in view of the Rule 4 of the Maharashtra Co-operative Societies Rules, 1961, which requires the application to be made in Form 'A', which in turn requires it to be made by the Chief Promoter. There being a dispute as to who is a chief promoter and having regard to the earlier order of this court in the aforesaid writ petition that the dispute should be decided by a appropriate court or authority and the petitioner having already approached the civil court for a declaration that he is a chief promoter, there is no infirmity in the order.

5. Rule is discharged. Petition is, therefore, dismissed.

DT.28.09.05

(S.A.BOBDE, J)

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